



July 15, 2021

**VIA FOIAONLINE.GOV**

National FOIA Office  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2310A)  
Washington, DC 20460

**RE: Freedom of Information Act Request for Records of Submissions to EPA  
Regarding the Chemical Known As 6PPD**

This is a request under the Freedom of Information Act (“FOIA”). I make this request on behalf of Advocates for the West. Advocates for the West is a public interest, nonprofit environmental law firm that protects and defends the American West’s natural treasures and wildlife.

**Requested Records**

Pursuant to FOIA, Advocates for the West seeks copies of the records<sup>1</sup> described below concerning submissions made to EPA regarding the chemical substance *N*-(1,3-dimethylbutyl)-*N*’-phenyl-*p*-phenylenediamine (CAS 793-24-8), commonly known as 6PPD:

1. Any submissions made to EPA under Section 8(e) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2607(e), between January 1, 2015 and the date of search concerning 6PPD and/or 6PPD-quinone, which is an oxidation product of 6PPD.
2. Any “FYI submissions” made to EPA between January 1, 2015 and the date of search concerning 6PPD and/or 6PPD-quinone. (“FYI submissions” are discussed in EPA’s TSCA Section 8(e) Reporting Guide, which is available at the following address: <https://www.epa.gov/sites/production/files/2015-09/documents/1991guidance.pdf> )

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<sup>1</sup> For this request, the term “records” includes, but is not limited to, any and all documents, correspondence (including, but not limited to, inter and/or intra-agency correspondence as well as correspondence with entities or individuals outside the federal government), emails, letters, notes, recordings, telephone records, voicemails, telephone notes, telephone logs, text messages, chat messages, minutes, memoranda, comments, files, presentations, consultations, assessments, evaluations, schedules, reports, studies, photographs and other images, data, maps, and/or all other responsive records, in draft or final form.

Any reference to an entity—such as “EPA”—includes all employees and agents of that entity as well as the entity itself and any division thereof.

Any non-identical duplicates of records that include any information not contained in the original record should be disclosed in response to this request. Non-identical duplicates may contain additional information due to notation, attachment, or other alteration or supplement, or because of differences in metadata.<sup>2</sup>

### **Requested Format**

Advocates for the West asks that EPA provide all responsive records in an electronic format, if at all possible. Any responsive record that is already in a particular electronic format should be produced in that format (that is, its “native format”). *See* 5 U.S.C. § 552(a)(3)(B) (“In making any record available to a person . . . , an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”); *TPS, Inc. v. U.S. Dep’t of Defense*, 330 F.3d 1191, 1195 (9th Cir. 2003) (“When an agency already creates or converts documents in a certain format—be it for FOIA requestors, under a contract, or in the ordinary course of business—requiring that it provide documents in that format to others does not impose an unnecessarily harsh burden, absent specific, compelling evidence as to significant interference or burden.”). Electronic records, including .PDF files, should be text-searchable, if at all possible. *See Eakin v. U.S. Dep’t of Defense*, Civil Case No. 5:16-972, 2019 WL 2368683, at \*2 (W.D. Tex. June 5, 2019) (requiring the government to produce responsive documents in “searchable-PDF form”).

Files produced in .PDF format should not contain any “portfolios” or “embedded files.” Please do not provide the records in a single, or “batched,” .PDF file.

Advocates for the West would appreciate the inclusion of an index in CSV or Excel format.

### **Timing and Form of Response**

Under FOIA, EPA must make a “determination” as to this request within 20 working days unless “unusual circumstances” exist that warrant an extension. 5 U.S.C. § 552(a)(6)(A)–(B). If EPA denies this request in whole or in part, that denial must comply with the requirements set out in 40 C.F.R. § 2.104. In particular, EPA must provide “[a] brief statement of the reason or reasons for the denial . . . and any FOIA exemption applied . . . in denying the request” and “[a]n estimate of the volume of records or information withheld.” 40 C.F.R. § 2.104(i)(2)–(3).

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<sup>2</sup> Advocates for the West is aware that some TSCA § 8(e) submissions for 6PPD are available online through ChemView. However, it is not clear whether *all* such submissions are available through ChemView, nor is it clear whether ChemView includes FYI submissions. For those reasons, Advocates for the West is submitting this FOIA request.

If EPA determines that parts of some records are exempt from disclosure, EPA must still disclose “[a]ny reasonably segregable [non-exempt] portion[s]” of those records. 5 U.S.C. § 552(b). “The amount of information deleted, and the exemption under which the deletion is made, shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption . . . under which the deletion is made. If technically feasible, the amount of the information deleted, and the exemption under which the deletion is made, shall be indicated at the place in the record where such deletion is made.” *Id.*

If any part of a record is responsive to this request, EPA must release the *entire* record, save any parts that are exempt from disclosure under one of FOIA’s exemptions. That is, EPA cannot withhold (through redaction or otherwise) *portions* of an overall responsive record as “non-responsive.” See *Am. Immigration Lawyers’ Ass’n v. Exec. Office for Immigration Review*, 830 F.3d 667, 677 (D.C. Cir. 2016) (“[O]nce an agency identifies a record it deems responsive to a FOIA request, the statute compels disclosure of the responsive record—i.e., as a unit—except insofar as the agency may redact information falling within a statutory exemption.”).

If this request turns out to “involve[] voluminous records or . . . require[] searches in multiple locations,” then EPA should, to the extent feasible, “provide interim releases . . . instead of waiting until all records are located and processed.” *DOJ Guide to the Freedom of Information Act: Procedural Requirements* at 73 (Sep. 4, 2019).

### **Record Delivery**

If the responsive electronic-format records are too voluminous to send as attachments via email, it is requested that they either be (1) made available for download or (2) saved on one or more DVDs, thumb drives, portable hard drives, or other electronic storage devices and sent via mail. Copies of any non-electronic-format records—and any electronic storage devices—should be mailed to:

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Advocates for the West  
3701 SE Milwaukie Ave., Suite B  
Portland, OR 97202

### **Fee Waiver Request**

Advocates for the West asks that EPA waive all copy, clerical, and other fees associated with providing information responsive to this request. FOIA requires federal agencies to furnish documents to public interest groups free of charge, or at a reduced rate, “if disclosure of the information is in the public interest.” 5 U.S.C. § 552(a)(4)(A)(iii). Disclosure is in the public interest if (1) “it is likely to contribute significantly to public understanding of the operations or activities of the government” and (2) “it is not primarily in the commercial interest of the requester.” *Id.* The relevant

EPA regulation sets out six factors that should be considered when determining whether these two conditions are met. *See* 40 C.F.R. § 2.107(l). As explained below, EPA should waive all fees associated with this request because Advocates for the West meets all of the regulatory factors.

*Factor 1: The subject of the request*

This request seeks information concerning “identifiable operations or activities of the Federal government,” 40 C.F.R. § 2.107(l)(2)(i)—namely, EPA’s regulatory activities under TSCA. The records sought by this request will show what information EPA has before it concerning 6PPD.

*Factor 2: The informative value of the information to be disclosed*

The information requested by Advocates for the West is “‘likely to contribute’ to an understanding of government operations or activities.” 40 C.F.R. § 2.107(l)(2)(ii). Responsive records will show what information concerning 6PPD is before EPA, which in turn will help illuminate whether and to what extent EPA is fulfilling its statutory duties under TSCA. *See, e.g.*, 15 U.S.C. § 2603(f) (requiring EPA to take certain actions when it possesses information “which indicates . . . that there may be a reasonable basis to conclude that a chemical substance or mixture presents a significant risk of serious or widespread harm to human beings”).

*Factor 3: The contribution to an understanding of the subject by the public is likely to result from the disclosure*

For two reasons, disclosure of the requested information will “contribute to the understanding of a reasonably broad audience of persons interested in the subject.” 40 C.F.R. § 2.107(l)(2)(iii). First, there is currently tremendous public interest in 6PPD thanks to a recent study showing that it has serious effects on coho salmon.<sup>3</sup> Second, Advocates for the West intends to share the requested information as appropriate. Advocates for the West has a broad public outreach and education campaign: it employs a full-time Director of Communications and Outreach who helps educate the public about the organization’s efforts to protect the American West; it sends regular updates to its mailing list of more than 2,000 recipients; it maintains an active social media presence; it routinely disseminates materials through its website; and it regularly engages in activities that attract the attention of the national news media, allowing for wide dissemination of information obtained directly or indirectly from FOIA requests.<sup>4</sup> In all of these efforts, Advocates for the West’s staff members use their skills and expertise to distill and

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<sup>3</sup> *See* Lynda V. Mapes, *Tire dust killing coho salmon returning to Puget Sound, new research shows*, Seattle Times (Dec. 3, 2020), <https://www.seattletimes.com/seattle-news/environment/tire-dust-is-killing-salmon/>; *Are Toxic Chemicals from Tires and Playground Surfaces Killing Endangered Salmon?: Hearing before the Subcomm. on Oversight and Investigations of the H. Comm. on Nat. Res.*, 117th Cong. (2021).

<sup>4</sup> *E.g.*, Lisa Friedman, *Court Blocks Trump’s Plan to Ease Bird Protections on Oil Lands*, N.Y. Times, Oct. 17, 2019, at A20.

“translate” for the general public legal and scientific matters that are often confusing and complex.

*Factor 4: The significance of the contribution to public understanding*

Disclosure of the requested information is “likely to contribute ‘significantly’ to public understanding of government operations or activities.” 40 C.F.R. § 2.107(l)(2)(iv). As discussed above, Advocates for the West regularly engages in public outreach and other activities that result in the wide dissemination of information obtained directly or indirectly from FOIA requests, and Advocates for the West intends to share, when appropriate, the information obtained from this request. This will “enhance[] . . . [t]he public’s understanding of the subject . . . to a significant extent.” *Id.*

*Factor 5: The existence and magnitude of a commercial interest*

Advocates for the West does not have “a commercial interest that would be furthered by the requested disclosure.” 40 C.F.R. § 2.107(l)(3)(i). Advocates for the West is a public interest, nonprofit environmental law firm that protects and defends the American West’s natural treasures and wildlife. It represents a wide range of conservation groups, groups of concerned citizens, and Indian tribes in both federal and state court, and it does not charge its clients attorneys’ fees for any of that work. Advocates for the West will use the requested information for two purposes: first, it will use the information as part of its ongoing efforts to inform the public about environmental and conservation issues in the American West; second, it may use the information to help guide future litigation decisions. Neither of these purposes establishes a “commercial interest” in the requested information, especially in light of Advocates for the West’s nonprofit status. *See* 40 C.F.R. § 2.107(b)(1) (defining a “[c]ommercial use request” as “a request from or on behalf of a person who seeks information for a use or purpose that furthers the requester’s commercial, trade, or profit interests”); *Cause of Action v. F.T.C.*, 799 F.3d 1108, 1118 (D.C. Cir. 2015) (holding that an interest in using information to advance litigation is not necessarily a “commercial” interest).

*Factor 6: The primary interest in disclosure*

Disclosure is not “primarily in the commercial interest of the requester,” 40 C.F.R. § 2.107(l)(3)(ii), because Advocates for the West has *no* commercial interest in the requested information.

For these reasons, EPA should grant Advocates for the West a full fee waiver. Should EPA deny this fee waiver request, please provide a detailed explanation for such a decision as required by 40 C.F.R. § 2.104(h) & (i).

**Conclusion**

I look forward to a determination from EPA on this request within 20 working days as required under FOIA. *See* 5 U.S.C. § 552(a)(6)(A)(i). EPA’s failure to respond by

this statutory deadline will constitute a denial of this request and entitle Advocates for the West to take immediate action to remedy such a denial.

If you have any questions about this request, please contact me by email at [amissel@advocateswest.org](mailto:amissel@advocateswest.org).

Sincerely,

/s/ Andrew R. Missel

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